IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 7740 of 2004(U)

ID.44/2001 of LABOUR COURT, KOLLAM
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PETITIONER:

THE MERCY HOSPITAL VALAKOM, KOTTARAKKARA REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.T.R.RAMAN PILLAI(SR.)
SRI.V.G.ARUN

RESPONDENTS:
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1. CLEATUS LUIS, MERCY HOME, KAROTTU BHAGAM, KAITHAKODU P.O.

2. THE INDUSTRIAL TRIBUNAL, KOLLAM.

BY ADV. SRI.T.M.CHANDRAN
SRI.R.ARUN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.7740/2004.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF MEMO OF CHARGES DATED 13.12.99.

EXT.P2: COPY OF AWARD IN I.D. NO.44 OF 2001 DATED 12TH DECEMBER, 2003.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.7740 OF 2004

Dated this the 5th day of December, 2007

JUDGMENT

The management in I.D.No.44/2001 before the Industrial Tribunal, Kollam has come up with this writ petition challenging Ext.P2 award of the Industrial Tribunal in that I.D. The issue referred for adjudication was as follows:

> "Whether the dismissal of Sri. Cleatus Luis, Security Guard Cum Attender of Mercy Hospital, Valakom with effect from 1-1-2000 is justifiable or not; if not, what relief the workman is entitled to."

Since the workman was found guilty of misconducts proved in a domestic enquiry, the Tribunal considered the validity of the enquiry as a preliminary point and found that the enquiry was conducted in full compliance with the principles of natural justice and that findings are proper, valid and supported by legal evidence. However, the Tribunal interfered with the punishment imposed on the workman in exercise of powers under Section 11A of the Industrial Disputes Act and directed reinstatement of

the workman with backwages and continuity of service, by substituting the punishment of barring of one increment. The petitioner management is challenging that part of the award, whereby the Tribunal has interfered with the punishment of dismissal imposed on the workman.

2. According to the petitioner, the misconducts proved against the workman were serious enough to warrant the punishment of dismissal from service and the Tribunal could not have validly interfered with the punishment except on a finding that the punishment imposed on the workman by the management is shockingly disproportionate. He would contend that the charges themselves would go to prove that the charges were serious enough to warrant punishment of dismissal and therefore by any stretch of imagination, the punishment of dismissal could not have been termed as shockingly disproportionate.

3. The learned counsel for the 1st respondent – workman would contend that the charges were minor charges of sleeping while on duty and non-co-operation in the matter of shifting a patient, which cannot be termed to be serious enough to warrant the punishment of dismissal.

4. I have considered the rival contentions in detail. The

establishment is a Hospital. The 1st respondent was a Security Guard - cum – Attender of the Hospital. The charges levelled against him are contained in Ext.P1, which roughly translated are as follows:

> " 1. on 10.12.1999 while the 1st respondent was on night duty, he was found sleeping from 1.30 a.m. to 5.20 a.m. as reported by the night Supervisor.
>
> 2. On 10.12.1999 when the 1st respondent was summoned to shift a patient, who died, the 1st respondent refused to co-operate".

5. Admittedly the Industrial Tribunal found that the above charges were proved. I am satisfied that these charges are serious enough atleast to refuse backwages to the 1st respondent.

6. In the above circumstances, I feel that the Industrial Tribunal went wrong in directing reinstatement with backwages. Accordingly, while confirming the direction of reinstatement, I modify the award by denying backwages to the 1st respondent. In all other respects, Ext.P2 award would stand.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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